

ST 95-20

Tax Type: SALES TAX

Issue: Audit Methodologies and/or Other Computational Issues  
Use Tax Liability on Purchases (Non-Filer) 1981 Limit

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )   Docket No.
OF THE STATE OF ILLINOIS      )   IBT #
                               )   NTL No.
                               )
v.                             )
                               )   Daniel D. Mangiamele
XXXXX                          )   Administrative Law Judge
                               )
Taxpayer                       )
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX

SYNOPSIS: This matter comes on for hearing pursuant to the taxpayer's timely protest of Notice of Liability XXXXX issued by the Department on May 27, 1994, for Retailers' Occupation Tax. At issue are the questions 1) whether the Department's audit procedures used were proper and 2) whether the Statute of Limitations affects this audit. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the Department on both issues.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Correction of Returns, showing a total liability due and owing in the amount of \$10,795.00. (Dept. Grp. Ex. #3)

2. Taxpayer offered no evidence or testimony into the record.

CONCLUSIONS OF LAW: On examination of the record established, this taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or argument, evidence sufficient to overcome the

Department's prima facie case of tax liability under the assessment in question. Accordingly, by such failure, and under the reasoning given below, the determination by the Department that XXXXX is subject to tax as imposed by the Illinois Retailers' Occupation Tax Act must stand as a matter of law. In support thereof, the following conclusions are made:

ISSUES #1 and #2

On examination of the record established, this taxpayer has failed to demonstrate by the presentation of testimony or through exhibits or argument, evidence sufficient to overcome the Department's prima facie case of tax liability under the Notice of Tax Liability in question. During the hearing herein, taxpayer's counsel argued that he disagreed with the audit procedure employed in this matter, however, he provided no documentary evidence or testimony to support his argument.

Once the Corrections of Returns or Determination of Tax Due were admitted into evidence, the amount of tax and penalty established by said corrected returns was deemed prima facie true and correct. The Department having established its case, the burden shifted to the taxpayer to overcome it by producing competent evidence as identified with taxpayer's books and records. *Masini v. Department of Revenue* 60 Ill. App. 3d 11 (1st Dist. (1978)). In the instant case, no documentary evidence was proffered on behalf of the taxpayer. Thus, the taxpayer failed to prove the Department's corrected returns incorrect, and the amounts established by said returns, therefore, remain as true and correct.

Mere argument without some documentary evidence to substantiate the taxpayer's claim that the prima facie case was prepared incorrectly is not sufficient. *Quincy Trading Post v. Department of Revenue*, 12 Ill. App. 3d 725 (4th Dist. 1973). Taxpayer clearly did not provide sufficient evidence to overcome the Department's prima facie case.

Taxpayer by letter, dated February 13, 1995, withdrew his motion

concerning the Statute of Limitations which this court finds had no effect in any instance on this audit period.

Taxpayer has failed to demonstrate through testimony, exhibits or argument any evidence to overcome the Department's prima facie case establishing tax liability herein. Accordingly, the amounts set forth in the corrected returns stand un rebutted and correct. On the foundation of the foregoing findings of fact and conclusions of law, it is therefore recommended that the Correction of Returns be finalized as issued.

Daniel D. Mangiamele  
Administrative Law Judge